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SEP 18 2017

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**United States Bankruptcy Court**

**in and for the District of OREGON**

1001 SW 5<sup>th</sup> Av., Portland OR 97204

In Re Peter Szanto, Debtor

**Adversarial # 16-ap-3114**

=====

Peter Szanto, Plaintiff

**core case:16-bk-33185-pcm11**

vs.

**Plaintiff's Response to Defendants'**

Evye Szanto, et al,  
Defendants

**Motion for Summary Judgment**

May it please this Honorable Court, comes now plaintiff in opposition to the Summary Judgment (MSJ) Memorandum submitted by the defendants.

Caveat: the documents presented herein are merely a portion of what plaintiff intends to present at trial. Support of the instant presentation will be supplemented if necessary at the hearing of the MSJ. See also plaintiff's declaration.

**A. INTRODUCTION**

**1. The Meaning of Conversion**

Defendants' initial argument (DE 217, p. 9) demands that plaintiff focus on the specific money which he claims was converted.

Such specificity was supplied through the First Amended Complaint (FAC) at ¶¶ 37-38:

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37. After being exonerated Peter Szanto was awarded \$250,000 upon various tort, personal injury and negligent custodial supervision claims.

38. Because Peter Szanto was a minor, the \$250,000 was given to his parents, Klara Szanto and Paul Szanto, as either: a) a trust for the benefit of Peter Szanto, b) as a bailment for the benefit of Peter Szanto, c) as a guardianship for the benefit of Peter Szanto, d) as a prospective right to real and personal property fully vested in Peter Szanto, e) a representative conservatorship on behalf of a minor, f) some other form of joint adult supervision of the money and property of a minor.

Here, the quantum of money is specified as is the fact that the issue is the tracking, tracing and identification of that original amount through the 50 years from its acquisition by plaintiff / debtor, FAC) at ¶¶ 40-41:

40. With accretions from the original sum, it is now anticipated that the present value of the original \$250,000 is in excess of \$8 million.

41. All of which, as will be rightfully demonstrated is part of the Bankruptcy estate of the debtor herein.

Thus, contrary to defendants' contention, the money, is specifically stated and identified. As matters of both fact and law, defendants' own citation to *PCO, Inc. v. Christensen* (2007) 150 CA4th 384, 395 specifically identifies the situation, as here, where: "Money cannot be the subject of a cause of action for conversion (when) there is a specific, identifiable sum involved, such as where an agent accepts a sum of money to be paid to another and fails to make the payment." accord *McKell v. Washington Mutual* (2006) 142 Cal.App.4th 1457, 1491. This is precisely the identified situation in this action, wherein plaintiff's parents were agents / fiduciaries for plaintiffs. And, wherein the defendants overcame the free will / independence of thinking of plaintiff's fiduciaries so as to create the instant controversy. The money entrusted to plaintiff's agents / fiduciaries was converted, expropriated, and / or placed into a sham trust, inaccessible to plaintiff, so as to thwart plaintiff's acquisition of money which, belongs to, and is rightfully his.

1  
2 Most testimony and evidence to be introduced at the trial of matter will be by  
3 direct presentation. Plaintiff will also present evidence based on the circumstances  
4 herein.

5 "Circumstantial evidence is not only sufficient, but in most  
6 cases it is the only proof that can be adduced. It (i)s not  
7 necessary . . . . in order to maintain the issue on their part,  
8 to prove by direct and positive evidence, that (a party has) a  
9 secret trust or property in the goods. It was sufficient if they  
10 proved such facts and circumstances tending to that conclusion as  
11 might reasonably induce the (the trier of fact) to believe that  
12 he had such trust or property."

13 *Rea v. Mo.*, (1873) 84 U.S. 532, 543

14 Specifically, a cause of action for conversion survives summary judgment  
15 through allegations of plaintiff's ownership or right to possession of property; defendant's  
16 wrongful act toward or disposition of the property, interfering with plaintiff's possession;  
17 and damage to plaintiff. *Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1066. Such  
18 allegations are made throughout the FAC so as fully to convey the fact that it was the  
19 defendants heinous acts which overcame Klara and Paul Szanto's free will, independent  
20 rational conduct and ability to understand the nature and consequences of their actions  
21 through mental and physical oppression caused by the defendants.

22 **a. Plaintiff's Proof**

23 Defendants next attempt is to misconstrue the testimony at the deposition of  
24 plaintiff. (Said testimony of plaintiff has been altered from what plaintiff actually stated.  
25 See plaintiff's supporting declaration.)

26 Defendants' fabrication of the deposition record was possible, because the  
27 defendants employed an unlicensed court reporter. Defendants' unlicensed reporter is  
28 not bound by either professional or ethical standards. Plaintiff's extensive inquiry clearly  
ascertained that the *modus* of fabrication of a phony deposition transcript by an

1  
2 unlicensed court reporter was merely considered clever lawyering on the part of  
3 defendants' counsel. How better to produce phony evidence to sustain an MSJ?

4 This Court's review of the unlicensed reporter issue is limited by the clear  
5 mandate of FRCP 28(a)(1) that the "deposition must be taken before" (A) an officer  
6 authorized to administer oaths either by federal law or by the law in the place of  
7 examination; or (B) a person appointed by the court." The reporter was unable to prove  
8 her licensure or appointment at the time of the deposition or within the week extension  
9 agreed to by the parties. Therefore, this Court's non-discretionary review can only be  
10 that the licensure condition precedent to administering and transcribing a deposition as  
11 a reporter was not fulfilled. Therefore, as a matter of law, the deposition was improperly  
12 conducted and is of no evidentiary value. Inadmissibility of any deposition improperly  
13 taken is the correct remedy. *Ott v. Stripe Law Firm* (1996) 169 F.R.D. 380.

14 Plaintiff has perfected his objections in (DE 223 – EXHIBIT A), as well as an  
15 appeal to the 9<sup>th</sup> Circuit Bankruptcy Appellate Panel as to this issue. Plaintiff renews  
16 the objections previously made to the deposition proffered by defendants.

17 At MSJ p. 10, ¶ starting with the word 'Despite', defendants' allege plaintiff  
18 has no evidence of incarceration, or his parents' claims made on his behalf, or that  
19 money was ever paid and so on. In fact, plaintiff's testimony is clear in his deposition  
20 (EXHIBIT B, Peter's deposition at p.221:21-23): that the evidence requested is with the  
21 defendants which they admit to having at [EXHIBIT C. Victor's deposition, p. 123:25 –  
22 124:2] "boxes and boxes and boxes of letters and things like that". [The clear words of  
23 this statement are that there are at least six boxes of materials which are purposefully  
24 being kept from this Court's consideration thereof.]

25 The fact of defendants' knowledge, awareness and total comprehension of  
26 the significance of plaintiff's incarceration, subsequent exoneration, eventual success  
27 in litigation and award based on multiple civil rights abuses, are partly evidenced by the  
28 multiple documents which they have admitted are in their possession, either by filing in  
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1  
2 various actions or through turn over at discovery [EXHIBIT D, an example or some  
3 materials which defendants have already produced regarding accusations against  
4 plaintiff in 1965.].

5 As for defendants knowledge and awareness of the facts concerning the  
6 plaintiff's claims related to the subject property; they were served with these claims in  
7 2015 [EXHIBIT E] and have defaulted in all required responses thereto.

8 Specifically then, plaintiff has been candid in his claims and methods of his  
9 proof; taking many hours fully to satisfy even the most complex discovery requests as  
10 well as defendants' non-compliant, self-imagined, 'request for denials'.

11 **b. Defendants' Purposeful Withholding of Evidence**

12 However, it is defendants who have been remiss in producing materials and  
13 documents in their possession which they are bound to produce. This specifically  
14 occurred as to the "boxes and boxes and boxes" (which is at least 6 boxes) revelation.  
15 Plaintiff propounded a request for production [EXHIBIT F], but received **NOT EVEN**  
**ONE DOCUMENT** [EXHIBIT G].

16 As a matter of fact, defendants response is outside the bounds of all  
17 believability. Defendants reduce the "boxes and boxes and boxes" (which is at least 6  
18 boxes) in [EXHIBIT G] to nothing more than the trite and evasive response of a  
19 willingness to confer, (but defendants demand that plaintiff must ask to discuss the  
20 issue. But, the only required request was the request for production itself. No further  
21 requests were necessary. *Szilvassy v. United States*(1979)82 FRD 752

22 Thus, the facts and actions of defendants and their counsel demonstrate a  
23 clear and mendacious effort to suppress materials which are in their possession. It is  
24 inconceivable in logic and reasonable thought that the at least 6 boxes which were  
25 represented under penalty of perjury to be filled with material relevant to the outcome of  
26 this action -- immediately upon request were averred to be completely useless.

1  
2 Plaintiff contends that what has occurred is spoliation and withholding of  
3 evidence by the defendants. This is evident. because what had been a treasure trove –  
4 certainly all of materials taken directly from plaintiff's office at the subject property --  
5 which filled at least six boxes – was now completely and totally withheld, not just from  
6 plaintiff, but from this Honorable Court !!!!

7 Withholding of evidence, regardless of whether it was done knowingly, or  
8 just expeditiously accomplished, amounts to an absolute and severe fraud upon the  
9 court. *Demjanjuk v. Petrovsky* (1993) 10 F.3<sup>rd</sup> 338.

10 The proof here is that materials which are available only from Peter Szanto's  
11 office make their way into evidence in this case [EXHIBIT D], but when specifically  
12 requested through mandatory discovery, plaintiff is shut-out by evasive responses!

13 "[The] truth-seeking process is corrupted by the withholding of evidence."  
14 *United States v. Bagley*, (1985) 473 U.S. 667, 692. Such withholding of evidence and  
15 crass FRCP 26. evasion of the duty to disclose, has occurred here. Defendants' MSJ  
16 attack castigates plaintiff for not having those very materials which are likely in their  
17 possession, but which they have failed to produce through discovery. And which they  
18 contend are the very cause for plaintiff's inability to offer the proof of facts alleged.

19 A reasonable probability exists that withholding of evidence will undermine  
20 confidence in the outcome of the trial. *Drumgold v. Callahan*, (2013) 707 F.3d 28, 39.  
21 Specifically, defendants, ask this Court to make MSJ decisions while defendants know  
22 that the exact materials which would undo their defense are being purposefully withheld

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27  
28  
**1. Defendants' Spoliation, Destruction, and Withholding**  
**of Evidence to Evade the TRUTH!**

The point, of course, is that defendants' conduct, *modus operandi* and intent  
fall squarely into the evidentiary construction that, whether by withholding or by outright  
spoliation or destruction, they are intentionally withholding from this Court materials

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2 which are injurious, and probably fatal, to their case.<sup>1</sup>

3  
4 Spoliation is “the destruction or significant alteration of evidence, or the  
5 failure to preserve property for another’s use as evidence in pending or reasonably  
6 foreseeable litigation.” *West v. Goodyear Tire & Rubber Co.*, (1999) 167 F.3d 776, 779.  
7 In this case, regardless of how named, defendants have purposefully failed to produce  
8 materials very essential to a complete understanding of the proof of facts in this case.

9 Evidence germane “to proof of an issue at trial can support an inference that  
10 the evidence would have been unfavorable to the party responsible for its destruction.”  
11 *Kronisch v. United States*, (1998) 150 F.3d 112, 126. This sanction serves a threefold  
12 purpose of (1) deterring parties from destroying evidence; (2) placing the risk of an  
13 erroneous evaluation of the content of the destroyed evidence on the party responsible  
14 for its destruction; and (3) restoring the party harmed by the loss of evidence helpful to  
15 its case to where the party would have been in the absence of spoliation. *West (ibid)*

16  
17 **Specifically, all of the materials in the “boxes and boxes and boxes”**  
18 **which are denied to plaintiff, can be presumed to be probative of plaintiff’s cause.**  
19

20 A fundamental principle of equitable adjudication is that “a wrongdoer  
21 should not profit by his misdeeds.” *St. Paul Fire & Marine Ins. Co. v. Cox*, (1985) 752  
22 F.2d 550, 551. This principle of equity should also be this Court’s guidance: defendants  
23 should not benefit by having deprived (or destroyed) those very documents which can  
24 be inferred by implication as being demonstrative of plaintiff’s contentions.  
25

26  
27 ***1. Many courts have entered judgment against a party for withholding  
28 evidence. (E.G.) In re Consolidation Coal (1997) 123 F.3d 126 and Sieck v.  
Russo, (1989) 869 F.2d 131. This Court should follow such valid examples  
because there is immense evidence that defendants have purposefully failed  
to produce and / or destroyed evidence in this matter which would assist this  
Court.***

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1

2 **2. Defendants' Badgering and Harassment of Plaintiff**

3 **are Fully Captured in Plaintiff's Deposition**

4

5 Defendants contend that the improperly taken deposition, before an

6 unlicensed court reporter tells a tale of: a) lack of evidence that plaintiff's money was

7 used to purchase the subject property; b) no proof that plaintiff's money was used to

8 finance Paul and Klara Szantos' business' expansion; c) failed substantiation of the

9 defendants' torture and extortion of Paul and Klara Szanto; d) a failure by victims Paul

10 and Klara Szanto specifically to identify their molesters and abusers.

11 Notwithstanding the narrow context in which defendants asked and plaintiff

12 answered the questions upon which these erroneous deductions are based, follow now

13 the errors of logic in defendants' argument.

14 **a. Plaintiff's Money Used in Purchase of Subject Property**

15 First, and foremost, the documents which plaintiff asserts would prove his

16 allegations were kept at his office at the subject property. As explained previously,

17 access to those records is now denied to plaintiff. This is because plaintiff's office at the

18 subject property was expropriated by the defendants during plaintiff's absence and the

19 documentary proof there from is now under the exclusive control of the defendants.

20 Defendants' MSJ (p. 10, tenth line from top) assertion that "public records

21 contradict Plaintiff's claim that \$100,000 of his money was used to purchase the

22 Baywood Property" is inaccurate on five counts. First, there is no plural records, merely

23 defendants' presentation of a solitary (DE 216, pp.29-34) document denominated as

24 "Agreement for Sale." Second, contrary to defendants representation (DE 218, ¶ 1)

25 the document is not a "purchase agreement," but merely a memorialization of one of

26 many agreements related to the subject property; (this particular version is a contract of

27 sale; terms of which is loss of all money paid if a payment is missed and summary loss

28



1  
2 of possession (DE 216, p. 32, 2<sup>nd</sup> ¶ from bottom). Third, the signatures of Paul and Klara  
3 Szanto are not notarized and the authenticity of those signatures is not validated  
4 in any manner. Fourth, the proffered document alone is insufficient to transfer real  
5 property in California (CA Civil Code § 1092), because the specific act of granting the  
6 subject property is never effected in the agreement. Fifth, the document is merely, as  
7 stated, a sales agreement. Fully stated at (DE 216, p. 31, ¶ 3), the delivery of the  
8 grant deed is postponed, thus, no transfer is ever effected by the proffered agreement.

9 Plaintiff will address more fully, at trial, the manner of proof that the subject  
10 property was purchased with money belonging to him. However, even the (DE 216,  
11 p.34) demonstrates Paul and Klara Szanto's intent to provide for plaintiff when they  
12 affirm that the agreement "inure(s) to the benefit of ...the heirs, assigns, beneficiaries .  
13 . of the parties hereto." Plaintiff being a beneficiary of money held by his parents for his  
14 benefit.

15 Finally, in 1966 CA Civil Code § 33 (now superceded by Family Code §  
16 6701) prevented minor plaintiff from contracting as to any interest in real property,  
17 except as evidenced as the heir, assign or beneficiary of the sales contract.

18 No contradiction exists. Defendants errant-spin of a mischaracterized  
19 document is unsupported by either the words, terms or facts of the document as well as  
20 California law relating to sales agreements.

21 **b. Clear and Extensive Defendant Harassment at the Improper Deposition**

22 There are two clear manners whereby defendants sought to harass plaintiff  
23 at the deposition of 6-21-17. First, identified in MSJ, (DE 217, p.10) wherein plaintiff's  
24 admission of having only a few documents relating to acquisition of \$250,000 in his  
25 possession is mischaracterized as "plaintiff does not have any evidence."

1  
2 However, plaintiff made clear at (Deposition, p. 221: 21-23 and p. 226:11-  
3 13) and numerous other times (which are purposefully withheld from this Court in the  
4 abbreviated record) that the documents which he has in his possession are limited, due  
5 to defendants' absconding with records from plaintiff's office at the subject property.

6 Second, as evidenced by defendants' continuing questioning of matters  
7 already asked and answered (Deposition p. 225:20-24, p. 226:9-10, p. 227:3-6, p. 228:  
8 1-4, p. 228:14-17), the effort of repeating questions to elicit alternate answers (or to fill-in  
9 alternate answers in the deposition which they controlled) focused on manipulating the  
10 altered transcript to infer defects in plaintiff's evidence.

11 Plaintiff's responses were altered, never proffered for correction (as required  
12 by FRCP 30(e)(1), which makes mandatory "on request by the deponent ... before the  
13 deposition is completed, the deponent must be allowed 30 days after being notified by  
14 the officer that the transcript ... is available in which: (A) to review the transcript ... (B) if  
15 there are changes in form or substance, to sign a statement listing the changes and  
16 reasons for making them."

17 Thus, the deposition record does not reflect the truth clearly expressed  
18 by plaintiff at (Deposition 226:11-14): "And I am saying to you that my possession of the  
19 documents at the present time is very minimal, because your clients have control over  
20 those documents."

21 **c. Defendants' Efforts to Impeach Plaintiff with Hearsay**

22 Another important defect of defendants' MSJ is its effort to characterize  
23 plaintiff's statements as defective, because plaintiff has made no effort to rely on  
24 hearsay. Defendants' effort was further harassment at the improper deposition.

25 Federal Rule of Evidence 802, precludes the admission of statements made  
26 outside a current trial or hearing which are offered for their truth, I.E. hearsay is not  
27 admissible evidence.

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2 Nevertheless, defendants seek to impeach plaintiff's testimony based on not  
3 statements not made to plaintiff by Klara Szanto (Deposition 207:12-13, 213:1-2,  
4 214:24-25, 217:9-11 and 14-16 and 22-23). Specifically defendants strategy (at the  
5 bottom of DE 217, p10 and top of 11) seems focused on alleging that because plaintiff's  
6 statements do not state any individual as being mentioned by Klara Szanto that voids  
7 plaintiff's elder abuse accusations. However, had Klara Szanto or plaintiff made any  
8 comments directly accusing defendants based solely on statements made to plaintiff by  
9 Klara Szanto, those statements would have been inadmissible hearsay; which plaintiff  
10 could not submit into evidence.

11  
12 **d. Defendants' Conclusion is Not Based on Fact**

13 (DE 217, p. 11, middle of the page at "Plaintiff's Depo") attempts to conclude  
14 that because defendants have not received evidence which they can conclusively deem  
15 probative, that there must not be any such evidence or that plaintiff will not have such  
16 evidence or testimony for trial.

17 Defendants postulate that because plaintiff did not submit to their hearsay  
18 trap at explained in the section 'C', that the inferential evidence which plaintiff  
19 explained in detail (Deposition 206:24-219:9) and which he intends to supplement with  
20 circumstantial trial testimony should – prematurely -- be considered insufficient.

21 Through 13 pages of deposition (IE, further badgering through repeatedly  
22 asking the same questions which were already answered) plaintiff explained the logical  
23 inferences he was able to make regarding conversations with his mother. Nonetheless,  
24 because plaintiff did not rely on hearsay, defendants find his testimony inadequate.

25 Defendants' reasoning strikes at the heart of MSJ sufficiency: **motions for  
26 summary judgment should present legal questions only**. In deciding such motions,  
27 the court rules on questions of law only and must not weigh evidence. *Anderson v.*  
28 *Liberty Lobby* (1986) 477 U.S. 242 accord *Matsushita Elec. Indus. Co., Ltd. v. Zenith*  
*Radio Corp.*, (1986) 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538.

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2 Nonetheless, without attacking the accuracy of defendants' deposition  
3 transcription, plaintiff is confident that the nature of his understanding of his mother's  
4 difficulties as discussed in the deposition demonstrate that he was making the correct  
5 logical inferences about defendants' affect on his mother's mental acuity, physical  
6 capacities and over-powering of Klara Szanto's health in her final days.

7 **e. Proof of Plaintiff's Contentions of Genuine Disputes of Material Fact**

8 Defendants predicate their MSJ on the erroneous notion that because their  
9 inquiries did not obtain answers only they themselves deem material; that there is no  
10 evidence to substantiate plaintiff's claims. However, such myopic, shortsighted illogic  
11 does not indicate that other evidence of plaintiff's allegations is lacking. However,  
12 defendants' profess just that (DE 217, p. 11):

13 "Because Plaintiff has not produced any evidence to support his  
14 allegation that Defendants tortured or extorted Paul or Klara  
15 Szanto, all of Plaintiff's claims that are even partially based  
16 on such allegations necessarily fail."

17 Notwithstanding, the fact that the time to present evidence has not arrived,  
18 plaintiff demonstrates Klara Szanto's resistance to some of the torture to which she  
19 and Paul Szanto were subjected.

20 **1. 105 Baywood Avenue, Property Removed from Trust**

21 It is undisputed that Paul and Klara Szanto signed a trust instrument in 1996  
22 [EXHIBIT H], wherein they themselves act as trustees of their trust. [EXHIBIT I and J]  
23 are letters which attest to Paul Szanto's increasing mental infirmity (this issue will be  
24 developed further at trial regarding when Paul Szanto's capacity to sign any document  
25 ended; evidence will also be introduced as to 1998 litigation regarding this exact issue).  
26 Because Paul Szanto and Klara Szanto were concerned about their diminishing abilities  
27 to understand and manage their finances, they began the process of handing over day-  
28 to-day management of their assets to trustees [EXHIBIT K].

1  
2 In 2005, Klara Szanto apprised Peter Szanto that enormous psychological  
3 and physical pressure, both emotional and physical, was being exerted upon her and  
4 Paul Szanto by the defendants regarding property and testamentary intentions. Klara  
5 Szanto expressed to Peter Szanto -- who was recuperating in an Israeli hospital, that  
6 she feared that Victor Szanto and Anthony Szanto intended to "do something" regarding  
7 Peter Szanto's entitlement to ownership of the property 105 Baywood Avenue property.

8 Peter Szanto instructed Klara Szanto and Paul Szanto to undertake two acts  
9 of "independent legal significance" which no amount of malicious intent and evil design  
10 on the part of the defendants could undo. *Uniform Probate Code § 2-515, United States*  
11 *v Rubier* (1981) 651 F.2d 628.

12 The plan arrived at was withdrawal of the Baywood Av. property from the  
13 Paul and Klara Szanto trusts such that the property was independent of any other  
14 testamentary aspect of Paul and Klara Szanto's estate.

15 During this time, Klara Szanto had explained to Peter Szanto that all of her  
16 power to resist Victor and Evye Szanto's intrusions into her private health and life were  
17 gone. Klara Szanto stated that there was very little she could do that was not scrutinized  
18 and analyzed by plaintiff's siblings.

19 Peter Szanto advised the following plan of action: **remove the Baywood**  
20 **property from the Trust and make sure the document is signed on a significant**  
21 **date**. Thus, to achieve these two acts of "independent legal significance" so as to  
22 demonstrate their intent to reaffirm Peter Szanto's interest in the Baywood realty, the  
23 property was removed from the trust on Peter Szanto's birthday [EXHIBIT L, the  
24 September 3<sup>rd</sup> signing reflects the time in California when it was already September 4<sup>th</sup>  
25 in Budapest (where plaintiff was born) and September 4<sup>th</sup> in Israel where plaintiff was  
26 then. To emphasize **their absolute intent that the property no longer be in any trust**  
27 whereby any of plaintiff's siblings would be enriched, Klara Szanto was encouraged to,  
28 and specifically did, write in her own hand the words "**out of trust**" on [EXHIBIT L].

1  
2 As the evidence will demonstrate, Paul and Klara Szanto had become  
3 wholly humiliated by Victor and Evye Szanto's continuing obfuscation of concepts and  
4 terminology related to trusts. As a matter of fact, given Paul and Klara Szanto's level of  
5 education, limited grasp of law and imperfect understanding of legal terminology, they  
6 were entirely disenchanted with the vehicle of a trust as a testamentary vehicle. For that  
7 reason, the words "out of trust" were also intended to signal their intent to terminate  
8 the trusts which they had previously established.

9 As will be demonstrated momentarily, Paul and Klara Szanto's effective  
10 actions to demonstrate renunciation of trust involvement as to property belonging to  
11 Peter Szanto have not been undone in the 12 years since they were effected.

### 12 **3. Statute of Limitations / Defendants Efforts to Revive Trust**

13 It was not until May 2006 that Victor Szanto realized that he no longer  
14 controlled the Baywood property. Victor immediately took steps to recapture the  
15 property through the trust he now controlled. [EXHIBIT M, note this document evidences  
16 that Paul Szanto has now been transferred to Red Bluff].

17 The effort to re-establish trustee involvement as to the Baywood property  
18 has been resisted by Peter Szanto. The matter is currently before the California Court of  
19 Appeal [EXHIBIT N, Appeal A 144586] (the matter has already made one visit to the  
20 California Supreme Court, wherein Peter Szanto's right to pursue this action were  
21 affirmed [EXHIBIT O].

22 Specifically, then the reason there is no limitation of act is because Peter  
23 Szanto has merely brought to this honorable Bankruptcy Court a matter related to his  
24 Bankruptcy estate litigation which was **BEGUN AGAINST HIM BY THE DEFENDANTS**  
25 in 2006. There has been <sup>No</sup> final decision in that case as demonstrated by the fact that  
26 the parties are currently before the California Court of Appeals.

1  
2 **a. Statute of Limitations Law Also Not Tolloed**

3 This case is merely a continuation of the 2006 protection of his rights action  
4 by Peter Szanto. However, timely jurisdiction is provided through CA Probate Code §  
5 10382 which allows commencement of probate actions until 3 years after the making of  
6 a final accounting by the trustees. ORS 115.005 likewise requires a final accounting to  
7 begin any limitations period. Here, the defendants have <sup>ENJOYED</sup> ~~enjoyed~~ their improper control  
8 over a trust which terminated in 2006 without ever making a single accounting to the  
9 plaintiff. Similarly, ORS 115.005(5)(a) does not affect any limitation of action regarding  
10 a proceeding to enforce a mortgage, pledge or other lien upon property of the estate, or  
11 to quiet title or reform any instrument with respect to title to property. This action seeks,  
among other things, to quiet title to the 105 Baywood Avenue property.

12 **b. Defendants' Efforts to Revive Trust Demonstrates Fiduciary Impropriety**

13  
14 As the previous sections have demonstrated, after 9-3-06, there was no  
15 longer any trust as to the Baywood property.

16 Nevertheless defendants continued their expropriation of plaintiff's property  
17 without restraint: [EXHIBIT P, Victor Szanto helping himself to \$3 million dollars without  
18 concern as to how his 88 year old father will repay the loan]; [ EXHIBIT Q, Anthony  
19 Szanto quitclaiming the Baywood property to himself]; [EXHIBIT R, Anthony Szanto  
alienating the Baywood property].

20 These actions demonstrate not merely improper fiduciary behavior by the  
21 defendants, by failing to make accountings, but also a defiance of the court in the  
22 San Mateo County action they commenced [EXHIBIT M].

23 **1. Defiance of San Mateo Probate Court's Jurisdiction**

24 Defendants selected the San Mateo Court to adjudicate the parties' dispute  
25 [EXHIBIT M]. Thereafter, continuing even now, they have been in contempt of that

jurisdiction by among other things [EXHIBITS P, Q, R] whereby they have alienated the very matters for which they sought relief with neither notice to the court nor leave of the court to alienate the exact items for which they are currently seeking relief.<sup>2</sup>

## **2. Fiduciary Failures; Existence of Fiduciary Relationship**

[EXHIBIT K] demonstrates defendants Victor Szanto and Anthony Szantos' appointments as trustees of the Paul and Klara Szanto trust. Those defendants then used their trustee authority in [EXHIBITS M, Q, R] to undertaken trust actions without unanimity of the trustees.

A trust is a fiduciary relationship with respect to property in which the person holding legal title to the property--the trustee--has an equitable obligation to manage the property *for the benefit of another*—the beneficiary. *Moeller v. Superior Court* (1997) 16 Cal. 4th 1124, 1133-4 accord *Estate of Shaw* (1926) 198 Cal. 352, 360; *Askew v. Reserve Funding, Ltd.* (1979) 94 Cal. App. 3d 402, 407; Restatement 2d Trusts, § 2.)

The fiduciary duty which these defendants abrogated to plaintiff is complete on the face of [EXHIBIT H] wherein plaintiff is a beneficiary of the Paul and Klara Szanto trust. This is further evidenced in the on-going San Mateo Probate matter, wherein, defendants have never made a single trust accounting since the commencement of that action. OR even when such a formal demand was made of them in 2012, pursuant to the Probate Code. [EXHIBIT S].

Defendants active concealment, fraudulent misrepresentations, self-dealing for financial gain, and direct participation in breach of fiduciary duty are all described in detail. On this basis, the complaint sufficiently states causes of action against them for breach of fiduciary duty and aiding and abetting breach of fiduciary duty. *City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, (1998) 68 Cal. App. 4th 445.

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***2. This Court is well aware of the defendants and their counsels contempt for this Court's jurisdiction by maintaining a parallel action in Nevada as to causes of action which are before this Court..***

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3 **3. Defendants Effort to Revive Trust**

4 In October 2005, defendants focused on ousting plaintiff from the  
5 testamentary intentions of Paul and Klara Szanto [EXHIBIT T]. This occurred when the  
6 defendants realized plaintiff could be summarily ousted from his property, because he  
7 was physically incapacitated and would be unable to object. That is, there is no rational  
8 basis, other than to oust plaintiff from the testamentary intentions of Paul and Klara  
9 Szanto, for the writing of a new trust.

10 Plaintiff learned of this new maneuver by the defendants from Klara Szanto  
11 while still hospitalized in Israel. That is, Klara Szanto telephoned plaintiff, in October  
12 2005 to apprise plaintiff that she was being induced – under pain of food deprivation and  
13 the withholding of medical treatment – to sign a new trust which made no distribution to  
14 plaintiff [EXHIBIT T, p.10].

15 Plaintiff's testimony is that it is his personal knowledge from his mother's  
16 excited utterances regarding imminent threats against her by the defendants that she  
17 was forced to sign the [EXHIBIT T] under threat of physical harm or injury.

18 **4. Judicial Estoppel Doctrine is Inapplicable Here**

19 Defendants mistake plaintiff's factual statements before the Court of Appeal  
20 in 2006 for argument. The objective of that appeal was, as now, to present the facts of  
21 Paul and Klara Szanto's trust intentions to a trier of fact for adjudication on the merits.

22 Plaintiff's statements were intended to be factual so as to provide the Court  
23 of Appeal with a complete understanding of the issues. More importantly, the Court of  
24 Appeal is not a court of first impression. The issues which relate to Peter Szanto's  
25 ownership could not be decided in that court in any event, because they had not been  
26 raised in the trial court (IE, the issue in the trial court was only whether there was to be  
27 a trust contest). However, what was important was that the Court of Appeal understand  
28 the then current status of the parties and facts. That is all that plaintiff addressed.

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2 Indeed, had plaintiff not been candid in the Court of Appeal, his factual  
3 presentation would have been perceived as lacking credibility due to mis-statements or  
4 an incorrect basic understanding of the facts and events. All that plaintiff presented was  
5 the facts as they existed in the record at that time.

6 There was no effort to mislead, merely plaintiff, as always, being forthright  
7 in every court in which he appears.

8 Specifically, as *Ryan Operations v. Santiam-Midwest Lumber* (1996) 81  
9 F.3d 355, 362, explains **judicial estoppel** applies only when the debtor engages  
10 in an effort to obtain 'unfair advantage' and engages in a scheme to mislead the court.

11 Plaintiff sought no advantage by his statement and did not seek to mislead.

### 12 **5. Evidence of Identity Theft is Based on Reasonable Inferences**

13  
14 Defendants attack on plaintiff's identity theft allegations makes the incorrect  
15 statement that plaintiff has "no evidence" (MSJ Memo p.17). Defendants' statement is  
16 erroneous, because plaintiff has fully enunciated the *modus operandi* methodology  
17 and exemplification for the perpetration of that identity theft.

18 Plaintiff's evidence relies on the circumstances of the dispute between the  
19 parties and the manner whereby defendants were able freely to access plaintiff's office  
20 at the 105 Baywood property; and thereby acquire plaintiff's personal identifying  
21 information and original driver's licenses, naturalization papers, expired passports so as  
22 to thereby create identities for themselves to use in the creation of bank accounts and  
23 credit cards in plaintiff's name for defendants exclusive use and enrichment.

24 The direct evidence shows defendants nearly maniacal focus on altering the  
25 testamentary intentions of Paul and Klara Szanto [EXHIBIT T]. Specifically the evidence  
26 demonstrates that defendants seek to acquire everything that ever belonged to Paul and  
27 Klara Szanto to the complete exclusion of plaintiff.

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2 Thus, the circumstantial script readily proceeds to defendants expropriating  
3 everything at the Baywood property to the complete exclusion of plaintiff (irrespective of  
4 plaintiff's entitlement or ownership). Thus, having come into the possession of plaintiff's  
5 identifying information, governmental identifications and other personal matters, the  
6 next step of creating a false identity based on plaintiff was easy. More importantly the  
7 facts of the events comports well with the notion that defendants would purposefully  
8 steal plaintiff's identity so to confound and drain plaintiff's time-and-financial resources  
9 while plaintiff attempts to undo the conversion and testamentary mischief defendants  
10 have created.

11 Ultimately, plaintiff relies on the direct evidence which is available: plaintiff's  
12 family, who are the defendants, have been waging war against him since they began  
13 litigation [EXHIBIT M] against him in 2006. The difference in testamentary devise when  
14 there are four siblings as opposed to three is only 8% (IE, 4 takers receive 25% each,  
15 3 takers receive 33.3% each). Plaintiff contends that such a small amount of increase  
16 would not be worth the personal guilt and sin of betraying a brother.

17 However, when the 8% is coupled with the ability to take everything which  
18 plaintiff possessed, the threat of detection, retribution or the all-mighty's holy rancor can  
19 be rationalized away (I.E., defendants said to themselves: a relationship with my brother  
20 is worthless compared to the money I get from taking everything he has).

21 "The illegal action must be inferred from the facts shown at  
22 trial. Inferred factual conclusions based on circumstantial  
23 evidence are permitted only when, and to the extent that, human  
24 experience indicates a probability that certain consequences can  
25 and do follow from the basic circumstantial facts. The inferences  
26 that the court permits the jury to deduce in a courtroom do not  
27 differ significantly from inferences that rational beings reach  
28 daily in informally accepting a probability or arriving at a  
conclusion when presented with some hard, or basic evidence. A  
court permits the jury to draw inferences because of this shared  
experience in human endeavors."

*Edward J. Sweeney & Sons, Inc. v. Texaco, Inc.*, (1980) 637 F.2d 105, 116

For these reasons, the demonstration of defendants culpability towards plaintiff is readily apparent from the direct evidence as well as the circumstantial evidence of the facts and events between the parties.

Additionally, the defendants should not obtain any benefit from their failures to produce documents or evasiveness and non-responsiveness at their depositions or what in all-likelihood is their spoliation and destruction of admissible evidence.

### **B. Plaintiff's Liability on Second Counterclaim**

Defendants' second counter claim is an action for "Wrongful Initiation of Civil Proceedings." That claim fails for at least five independent reasons.

**First**, "(a) plaintiff who asserts a claim for that tort must plead and prove the following elements: (1) The commencement and prosecution by the defendant of a judicial proceeding against the plaintiff; (2) The termination of the proceeding in the plaintiff's favor; (3) The absence of probable cause to prosecute the action; (4) The existence of malice, or as is sometimes stated, the existence of a primary purpose other than that of securing an adjudication of the claim; and (5) Damages." *Checkley v. Boyd*, (2000) 170 Ore. App. 721, 734-5.

(DE 66), the counterclaim – did not plead the termination of any proceeding in defendants' favor. (DE 66) did not plead malice. (DE 66) did not plead that plaintiff lacked probable cause in his claims.

**Second**, defendants have already prevailed as to their identical (DE 66) claims in the Nevada state court where the presiding judge is their close personal friend and periodic houseguest. Thus, defendants have already prevailed on their (DE66) identical claims in another court, thus there is a jurisdictional bar to this Court granting the same relief *United States v. Tohono Nation* (2011) 563 US 307.

1  
2 **Third**, this Court failed to protect its jurisdiction from the Nevada court  
3 taking jurisdiction over the parties and issues as requested by plaintiff in (DE 187) when  
4 this Court denied the Writ request which would have preserved its jurisdiction (DE 189).  
5 Therefore, this Court does not have jurisdiction to consider a matter which the  
6 defendants have brought to final determination in another court.

7 **Fourth**, other than stating the word malice, just once, as part of a citation,  
8 defendants have never alleged malice in (DE 66). Neither have they argued any basis to  
9 infer nor demonstrated any malice on the part of plaintiff.

10 **Fifth**, other than the conclusory "The evidence submitted herewith  
11 demonstrates that the first four elements have been satisfied," (DE 217) there is no  
12 affirmative demonstration of which evidence proves what.

13 Thereon, the MSJ on the counterclaim fails in its entirety.

### 14 **C. Conclusion**

15 The essential metric in MSJ decisions is whether a litigant will be deprived  
16 of an opportunity to present proof. *Tunstall v. B'hood of Loco. Firemen* (1946) 69F.Supp  
17 826. In this case, the defendants have focused on: a) discovery abuse through evasion,  
18 hiding and spoliation of evidence; b) pursuing a separate action in Nevada based on  
19 personal friendship with their local judge. Through both these strategies defendants  
20 have been able to thwart plaintiff's efforts to present direct evidence. Thereupon, plaintiff  
21 necessarily relies on circumstantial evidence to prove his claims:

22 "[it] is true that the issue of material fact required by Rule  
23 56(c) to be present to entitle a party to proceed to trial is not  
24 required to be resolved conclusively in favor of the party  
asserting its existence; rather, all that is required is that  
sufficient evidence supporting the claimed factual dispute be  
shown to require a jury or judge to resolve the parties'  
differing versions of the truth at trial."

25 *First Nat'l Bank v. Cities Serv. Co.*, (1968) 391 U.S. 253, 288-9  
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2 In their presentation, defendants have focused on nothing other than their  
3 own failures to elicit the evidence they believe would prove plaintiff's claims against  
4 them. In that regard they have erred by presumptuously believing they are in some  
5 position to pre-ordain what the Court's decision metric will be. Likewise, defendants  
6 have failed to recognize that the circumstances of the dispute between the parties  
7 speaks volumes as to the motivations of the defendants.

8 Both the circumstantial evidence which demonstrates defendants actual  
9 undertaking of a strategy to deprive plaintiff of his money and property, as well as the  
10 direct evidence whereby defendants have resisted the production of, and likely have,  
11 destroyed evidence emphatically demonstrate that there are genuine disputes of  
12 material fact in this case.

13 Respectfully,

14 DATED 18 Sept. 2017      /S/  Peter Szanto  
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2 **Proof of Service**

3  
4 My name is Jakkob Szanto, I am over 20 years of age and not a  
5 party to the within action. My business address is PO Box 4614,  
6 Portland OR 97208. On the date indicated below, I personally served the  
7 within:

8 **Response to Defendants' Motion for Summary Judgment Brief**

9  
10 by e-mail to Mr. Olsen and Mr. Henderson at:

11  
12 nhenderson@portlaw.com

13  
14 I declare under penalty of perjury under the laws of the United States  
15 that the foregoing is true and correct. Signed at Portland OR.

16 Dated 9-18-2017 /s/  Jakkob Szanto  
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